



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-FV-13-0040; FV13-922-1 FIR]

**Apricots Grown in Designated Counties in Washington;
Suspension of Handling Regulations**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that suspended the handling regulations and inspection requirements prescribed under the marketing order for apricots grown in designated Counties in Washington (order). The interim rule suspended the minimum grade, size, quality, maturity, and inspection requirements of the order for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. This rule is expected to reduce overall industry expenses and increase net returns to growers and handlers.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement

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Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and Order No. 922, both as amended (7 CFR Part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Orders 12866, 13175, and 13563.

The handling of apricots grown in designated Counties in Washington is regulated by 7 CFR part 922. The order's handling regulation contains minimum grade, size, quality, maturity, pack, and container requirements of apricots handled under the order. The objective of the handling regulation has been to ensure that only acceptable quality apricots enter fresh market channels to foster consumer satisfaction, increase sales, and improve returns to producers.

Due to the evolving nature of fresh fruit marketing, many wholesale and retail apricot buyers have developed their own specific criteria that their suppliers are required to meet to ensure a high quality product. Many of these buyer standards are higher than those in effect under the order. For this reason, the Committee believes that buyer standards now override the minimum standards of the order and that the order's regulations are no longer necessary.

In addition, the Committee believes that the cost of complying with the order's handling regulations, when such regulations are in effect, may exceed the benefits. Because handlers must comply with both their buyer's requirements and the order regulations, two sets of

compliance expenses are incurred. Because the buyer requirements are more stringent than the order's, the Committee believes that the cost of complying with them does not result in any additional benefit to producers or handlers.

Therefore, this rule continues in effect the interim rule that suspended the handling regulations prescribed in § 922.321 for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods.

The order contains provisions for handlers to apply for waivers from mandatory inspection when such inspection is not readily available from the Inspection Service. With the suspension of the regulation, such waivers are no longer necessary. Therefore, consistent with the suspension of § 922.321, this rule also continues in effect the action that suspended § 922.111 for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods.

In an interim rule published in the **Federal Register** on October 23, 2013, and effective on October 24, 2013, (78 FR 62963, Doc. No. AMS-FV-13-0040, FV13-922-1 IR), §§ 922.111 and 922.321 were indefinitely suspended in their entirety, beginning on October 24, 2013.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 94 growers of Washington apricots in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms as those having annual receipts of less than \$7,000,000. (13 CFR 121.201)

The National Agricultural Statistics Service (NASS) reports that the 2012 total production and utilization (including both fresh and processed markets) of Washington

apricots was approximately 6,700 tons, the average price was \$1,250 per ton, and the total farm-gate value was approximately \$8,371,000. Based on these reports and the number of apricot growers within the production area, it is estimated that the 2012 average revenue from the sale of apricots was approximately \$89,000. In addition, based on information from the USDA's Market News Service, 2012 f.o.b. prices for WA No. 1 apricots ranged from \$16.00 to \$24.00 per 24-pound loose-pack container, and from \$18.00 to \$27.00 for 2-layer tray-pack containers. Using average price and shipment information provided by the Committee, it is determined that each of the Washington apricot handlers currently ship less than \$7,000,000 worth of apricots on an annual basis. In view of the foregoing, it is concluded that the majority of growers and handlers of Washington apricots may be classified as small entities.

This rule continues in effect the action that suspended the handling regulations specified in §§ 922.111 and 922.321 for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. The suspension of these handling regulations allows the Washington apricot industry to market apricots without regard to the minimum grade, size, quality, maturity, and inspection requirements

prescribed under the order. Authority for this action is provided in § 922.53.

This action is not expected to increase the costs associated with the order requirements. Rather, this action allows handlers to decrease their costs during the 2013-2014 fiscal period and subsequent fiscal periods by eliminating the expense associated with mandatory inspection. However, this rule does not impede handlers from seeking inspection on a voluntary basis if they find inspection desirable. The opportunities and benefits of this rule are equally available to all Washington apricot handlers and producers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs,

reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in the Committee's deliberations. Like all Committee meetings, the May 13, 2013, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before December 23, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0040-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35);

and the E-Gov Act (44 U.S.C. 101), as well as the findings in the interim rule that the regulatory requirements no longer tend to effectuate the declared policy of the Act.

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 62963, October 23, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922 - [AMENDED]

Accordingly, the interim rule that amended 7 CFR part 922 and was published at 78 FR 62963 on October 23, 2013, is adopted as a final rule, without change.

Dated: February 26, 2014

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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